Research Paper | Law | E-ISSN No : 2454-9916 | Volume : 7 | Issue : 3 | Mar 2021

THE COMPANIES ACT 2013: A STRENGTHENING TOOL FOR CORPORATE GOVERNANCE

Dr. Shehnaz P. Billimoria

B.Sc., LL.M. (Gold Medalist), Ph.D., GSET

Principal (I/C.), D. D. Law College, Navsari-396445, Gujarat, India.

ABSTRACT

The much-anticipated Companies Act, 2013 received presidential assent on August 29, 2013, although the route to its enactment began in 2004 with the efforts of the then-government to replace an ineffective statute. Significant measures in the areas of shareholder democracy, e-governance, compliance and enforcement, disclosure rules, auditors, and mergers and acquisitions are included in the '2013 Act.' It establishes a more effective legal framework that is treated in accordance with international norms. This article seeks to describe the concept of the Companies Act, 2013, the creation of the new Act, and its usefulness as a tool to promote governance in the Indian corporate sector, highlighting the importance of the Companies Act 2013 in raising the bar on corporate governance.

KEYWORDS: Companies Act 2013, Corporate Governance, Compliance, Disclosure.

INTRODUCTION:

The Companies Act of 2013 is a major piece of legislation that is expected to have a favourable impact on the corporate sector, the health of India's capital markets, and the growth of the Indian economy. The new '2013 Act' replaces the 57-year-old Companies Act, 1956, which has been rendered ineffectual in dealing with current concerns. The President of India gave his assent to the Companies Act, 2013, on August 29, 2013, however the route to its legislation began in 2004 with the efforts of the then-government to replace an ineffective statute. It was repeatedly submitted as a Companies Bill in the Lok Sabha and Rajya Sabha before ultimately receiving assent in the Lok Sabha and Rajya Sabha on 18 December 2012 and 8 August 2013, respectively, prior to the enactment of the revised Companies Act, 2013. The Companies Act of 2013 was enacted in an attempt to decrease the content of the Act by eliminating redundant parts and inserting new measures that are relevant in India's current situation. The new law includes 470 sections, 7 schedules, and 29 chapters, compared to the Old Companies Act 1956, which had almost 750 sections, 15 schedules, and 13 parts. However, a thorough grasp of the ramifications of the various provisions of the Companies Act, 2013 necessitates familiarity with the corresponding rules issued by the Ministry of Corporate Affairs on a regular basis. Corporate governance, e-governance, compliance and enforcement, disclosure rules, auditors, and mergers and acquisitions are all addressed in the 2013 Act. The Corporations Act also includes novel concepts such one-person companies, small businesses, dormant businesses, secretarial audits, auditor rotation, class action cases, registered valuers, and corporate social responsibility.

REVIEW OF THE LITERATURE:

Black and Khanna (2007) want to see how corporate governance reforms affect stock price valuation. When they looked at the effects of the CII's May 1999 announcement of major corporate governance reforms (known as Clause 49) on the share prices of Indian companies, they found that faster-growing companies, companies that require external equity capital, and companies that are cross-listed gained more than other companies. They emphasise the fact that the usefulness of mandated governance regulations varies by country and is influenced by the country's governance level. With respect to Indian firms, Balasubramanian, Black, and Khanna (2008) highlight firm level governance and its relationship with firm market value. They discover a positive relationship between corporate governance and market value, which applies to both larger and smaller businesses. They also claimed that India's legal standards are adequately stringent, and that excessive compliance does not raise a company's value. Many reforms in Indian corporate laws have occurred in recent years to strengthen corporate governance, although most of them were just transfers of key advancements in nations such as the United States and the United Kingdom. Varottil (2009) examines the adequacy and efficacy of Indian corporate governance norms or laws, proposing changes such as improving external audit, reducing reliance on independent directors, diluting the concept of promoter under law, considering the imposition of fiduciary duties on controlling shareholders, and encouraging them to engage in activism to improve corporate governance. India's corporate governance framework has changed dramatically during the 1990s. The corporate governance framework has undergone a number of reform initiatives, both required and voluntary.

OBJECTIVES OF THE STUDY:

1. To highlight the corporate governance provisions of the Companies Act of 2013.
2. To examine the new ideas introduced by the Companies Act of 2013.
3. To assess the significance of the recently enacted sections of the Companies Act 2013 in terms of strengthening India's corporate governance system.

COMPANIES ACT, 2013 – NEW CONCEPTS:

The Companies Act of 2013 replaced the 57-year-old Companies Act of 1956. With its new provisions and revisions to previous ones, the '2013 Act' attempts to promote corporate governance in India. Here are some new concepts and concepts connected to corporate governance that are worth discussing:

- **Key managerial personnel:**

According to Section 2(51), the notion has been defined, and the extent of the provision has been expanded. The new Act also mandates the hiring of the following key management personnel on a full-time basis for every listed business and every other firm with a paid-up share capital of five crore INR or more:

(i) Managing director, or chief executive officer or manager and in their absence, a whole-time director.

(ii) Company secretary.

(iii) Chief financial officer.

Secretarial Audit [Section 204]:

In respect of publicly traded corporations and other classes of companies as may be prescribed, the 2013 Act makes it mandatory to have secretarial audits performed by a Company Secretary in practise. In accordance with the draught rules, it will apply to any public business with a paid-up share capital of more than Rs. 100 crores. It is a compliance system designed to detect frauds in advance and take corrective action, with the goal of improving corporate governance as a result of this.

Serious Fraud Investigation Office (SFIO):

The Serious Fraud Investigation Office has been granted legal status by the government.

Corporate Social Responsibility:

The concept of corporate social responsibility (CSR) has been added as a required element in the new Act. Every company with a net worth of 500 crore INR or more, or a turnover of 1000 crore INR or more, or a net profit of five crore INR or more, during any financial year shall constitute a corporate social responsibility committee and spend at least 2 percent of the average net profits of the immediately preceding three years on CSR activities, and if this amount is not spent, an explanation for the reasons for the failure to do so must be provided in the director's annual report (Section 135 of the 2013 Act).

Insider trading and prohibition on forward dealings:

Because of the need to protect small investors and members of public, Section 195 of 2013 Act defines insider trading and price-sensitive information for the first time. It also prohibits any person, including a director or key managerial person, from engaging in insider trading [section 195 of 2013 Act].

Woman director [Section 149(1) of 2013 Act]:
The Companies Act 2013 introduces the concept of a requirement to have at least one woman director in respect of I every listed company, and (ii) every other public company that has paid–up share capital of one hundred crore rupees or more, or a turnover of three hundred crore rupees or more, within three years of the commencement of the second proviso to sub–section (1) of section 149.

Independent directors [Section 149(4) of 2013 Act]:
The term "Independent Director" has been established under the Act, as have various rules governing their nomination, role, and responsibilities as independent directors. According to the 2013 Act, every publicly traded business must have independent directors who account for at least one-third of the total number of directors. Section 150 of the 2013 Act also provides for the establishment of a panel or a data bank comprised of representatives from the Ministry of Corporate Affairs, the Securities and Exchange Board of India, the Reserve Bank of India, professional institutions, chambers of commerce and industry, and other organisations to assist in the appointment of these directors. The MCA is responsible for maintaining this databank, which will be used by firms to select their independent directors from.

Nomination and Remuneration Committee and Stakeholders Relationship Committee:
To comply with Section 178 of the 2013 Act, every publicly traded company or other public company with a paid-up capital of 100 crore INR or more, or with an aggregate of outstanding loans or borrowings, debentures, or deposits in excess of 200 crore INR, is required to establish a nomination and remuneration committee. This Committee is tasked with developing and recommending to the Board of Directors policies on nomination and remuneration for the company's executive officers. When the board of directors of a corporation has more than 1000 shareholders, bondholders, depositors, or other security holders at any point during the financial year, the company is also required to establish a Stakeholders Relationship Committee.

Related Party Transactions:
Some of the most significant modifications made in the area of related party transactions under Section 188 of the 2013 Act include a broader definition of related party transactions and the inclusion of transactions with related parties in the board's report. The Act also includes a penalty for violating the aforementioned provisions, which includes both civil and criminal penalties.

Rotation of Auditors:
The '2013 Act' includes major reforms in regards to audit and auditors, such as the appointment process for auditors and mandatory rotation of auditors, with the goal of improving audit effectiveness and auditor accountability. According to the new requirements, the auditor will be appointed for a five-year term, with ratification required at each annual general meeting. Section 139 of the new law mandates auditor rotation every five years for individual auditors and every ten years for audit firms, with a consistent cooling off time of five years in both cases for listed businesses (and other classes of companies as may be prescribed). According to the 2013 Act, any service provided by the auditor must be approved by the board of directors or the audit committee, and the auditor is prohibited from delivering certain services listed in the Act. These constraints are intended to ensure auditor independence, provide credibility to publicly available financial information, and provide value to investors and other stakeholders.

Registered Valuers:
According to the 2013 Act, a new concept of registered valuers has been introduced, who are responsible for delivering valuation reports as required under the provisions of various sections of the Act for a fair valuation.

Class Action Suits:
In corporate governance, the participation of shareholders is essential. Because of the importance of shareholder democracy, the Companies Act 2013 includes certain safeguards to protect the rights of shareholders and the interests of smaller owners. In order to strengthen shareholder democracy, class action lawsuits are a crucial idea to understand. According to Section 245 of the Act, a significant group of individuals can bring a claim to court on their own behalf, or a class of defendants can be sued on their behalf collectively. By establishing this idea, the new Companies Act 2013 recognises the need of maintaining compliance with international norms. This has given shareholders associations or groups of shareholders the authority to bring legal action against a company in the event of a fraudulent act on the part of the firm, as well as to participate in investor protection operations and class action lawsuits.

CONCLUSION:
The Companies Act of 2013, being a modern piece of legislation, allows the Indian business sector to flourish and be more regulated. The new Act promotes improvement in corporate governance rules, higher accountability of auditors and firms, increased transparency, and, as a result, protection of the interests of all stakeholders, including shareholders, through its better and improved provisions. The 2013 Act also aims to promote corporate democracy and self-regulation in India's corporate sector. The Act seeks to align with international criteria in the majority of sectors. Although the provisions of the Companies Act do not create a paradigm shift in and of themselves, when taken together, they provide a strict enforcement mechanism that fosters a better degree of corporate governance and reduces corruption and fraud. Without a doubt, the Companies Act of 2013 is a tool for improving corporate governance.

REFERENCES:

I. Afsharipour, A., "Corporate Governance Convergence: Lessons from the Indian Experience" (2009).

II. Afsharipour, A., "The Promise and Challenges of India's Corporate Governance Reforms"

III. Afsharipour, A.,"Brief Overview of Corporate Governance Reforms in India"(2011)

IV. Balakrishnan, R., "What is stored in the draft Companies Bill 2009 - Relating to accounts and audit".

V. Balasubramanian, N., Black, B. S., and Khanna, V., "Firm-Level Corporate Governance In Emerging Markets: A Case Study Of India"(2009),European Corporate Governance Institute,

VI. Black, B. S., and Khanna, V. S., "Can Corporate Governance Reforms Increase Firms' Market Values: Evidence from India" (2007), European Corporate Governance Institute

VII. Chakrabarti R., "Corporate Governance in India –Evolution and Challenges"

VIII. Companies Act 2013-Key Highlights and Analysis .pdf on 6th Jan. 2015.

IX. CompaniesAct013-New Rules of the Game(2013)from on 14th Jan. 2015.

X. Dube, I., "Company Bill 2009, JPC report and International Perspective of Corporate Governance"

XI. Hindu Business Line

XII. SEBI Consultative Paper On Review Of Corporate Governance Norms In India

XIII. Varottil, U., "A Cautionary Tale of the Transplant Effect on Indian Corporate Governance"